

19 (Pages 518 to 521)

1 litigation concerning the applicability
 2 of and injunction similar to the Asbestos
 3 Insurance Entity Injunction in any other
 4 case?

5 MR. WISLER: Can you repeat
 6 that? I didn't hear you, Dan.

7 BY MR. COHN:

8 Q. Are you aware of any
 9 litigation concerning the scope of the
 10 asbestos or an injunction similar to the
 11 Asbestos Insurance Entity Injunction in
 12 any other case?

13 A. The only litigation that I
 14 am aware of that's remotely similar --
 15 and I don't profess to know all the
 16 litigation that might be floating around
 17 out there -- is actually litigation over
 18 an entity that is closer to the Asbestos
 19 Permanent Channelling Injunction. And
 20 it's the Travelers injunction that's
 21 presently before the United States
 22 Supreme Court. To be more specific, it's
 23 the Manville injunction that Travelers is
 24 litigating about.

Page 518

Page 520

1 asbestos personal injury claims against
 2 or arising out of Grace is something that
 3 has to be channelled to the Trust because
 4 it fits within the definition of an
 5 asbestos personal injury claim under
 6 524(g), and that in order that Grace be
 7 protected from such indemnity claims, the
 8 roughly \$3 billion that Grace and various
 9 related parties are paying to this Plan
 10 is, in part, on behalf of those settled
 11 insurers.

12 So if the question means, is
 13 Maryland Casualty Company paying
 14 something over and above what Grace is
 15 paying, the answer is not to my
 16 knowledge.

17 Q. Is there a benefit to the
 18 Grace Bankruptcy Estate or to the
 19 Asbestos PI Trust from having the
 20 Asbestos PI Channelling Injunction
 21 protect Maryland Casualty Company?

22 MR. FINCH: Object to that
 23 question to the extent that it
 24 calls for speculation.

Page 519

Page 521

1 Q. Has Maryland
 2 Company paid or agreed to pay any money
 3 or other consideration in order to be
 4 covered by the Asbestos PI Channelling
 5 Injunction?

6 A. Well, that depends on how
 7 you use the term "pay."

8 The basis, which I take it,
 9 which is what you are asking for, for
 10 Maryland Casualty being a protected party
 11 to this Plan is that in the past,
 12 Maryland Casualty Company has paid a lot
 13 of money to Grace and entered into a
 14 settlement agreement with Grace which
 15 releases that coverage and which Grace
 16 indemnifies it against claims.

17 As I testified, I believe,
 18 on Friday, Grace, as part of this deal,
 19 Grace has had two positions that it has
 20 taken that we have -- we being the
 21 committee and its representative --
 22 accepted. Number one is a claim for
 23 indemnity from a settled insurer based on
 24 claims against that insurer that are

1 Mr. Wisler: Could you read
 2 the question back, please?

3 MR. SCHIAVONI: Objection to
 4 form; objection, calls for waiver;
 5 objection, calls for legal
 6 conclusion.

7 MR. FINCH: I disagree that
 8 it calls for waiver.

9 But you can answer.

10 THE WITNESS: Could you
 11 reread the question?

12 MR. COHN: Let's go off the
 13 record for a second.

14 (There was a discussion held
 15 off the record at this time.)

16 (The reporter read from the
 17 record as requested.)

18 Mr. Wisler: I object to
 19 form.

20 THE WITNESS: Yes

21 BY MR. COHN:

22 Q. What is that benefit?

23 MR. FINCH: You can answer
 24 the question to the extent that it

20 (Pages 522 to 525)

Page 522	Page 524
1 doesn't reveal privileged or work 2 product information. 3 THE WITNESS: The benefit to 4 the Grace Estate is that it 5 eliminates potential claims by 6 Maryland Casualty Company against 7 the Debtor and its Estate. That's 8 the benefit.	1 Mr. Schiavoni for Arrowood. 2 We join your objection, and we 3 would also say this is outside the 4 scope of the designation and that 5 Mr. Lockwood doesn't have to 6 answer every single question no 7 matter what it is. This is not in 8 the designation.
9 BY MR. COHN: 10 Q. Is there any agreement 11 between Grace and Maryland Casualty 12 Company which requires Grace to indemnify 13 Maryland Casualty Company for its own 14 misconduct?	9 MR. FINCH: Can we hear back 10 the question? 11 (The reporter read from the 12 record as requested.)
15 MR. FINCH: Objection to the 16 extent that calls for a legal 17 opinion. And object to the extent 18 that there is information 19 responsive to this question that's 20 privileged, I instruct you not to 21 answer if it would reveal 22 privileged communications.	15 THE WITNESS: In my 16 understanding, there is an 17 agreement between Grace and 18 Maryland casualty company which 19 contains indemnification 20 provisions. I am not in a 21 position to express an opinion on 22 what the scope of that 23 indemnification is, much less 24 whether or not Grace and Maryland Casualty agree on what the scope of that indemnification is.
1 privileged communications, you can 2 do so -- 3 MR. SCHIAVONI: 4 Mr. Lockwood, I think -- 5 MR. FINCH: Tank, let me 6 finish. 7 MR. SCHIAVONI: Oh, I am 8 sorry. 9 MR. FINCH: But I still 10 object to the extent that it calls 11 for a legal opinion. 12 MS. BAIER: I also object. 13 You have asked Mr. Lockwood 14 whether he knows about -- you 15 haven't asked him about whether he 16 knows. You asked him is there an 17 agreement between Grace and 18 Maryland Casualty Company. I 19 object to the form. You are now 20 asking Mr. Lockwood to get into 21 the head of W.R. Grace. 22 MR. SCHIAVONI: I am sorry, 23 Mr. Finch. I didn't mean to 24 interrupt you before.	1 BY MR. COHN: 2 Q. Is it the position of the 3 Asbestos PI Committee that if the 4 indemnification provisions are construed 5 to protect Maryland Casualty from its own 6 misconduct, that such provisions would be 7 enforceable? 8 MR. FINCH: Object to form, 9 calls for a legal conclusion. 10 THE WITNESS: It actually 11 calls for speculation. 12 MR. FINCH: That, too. 13 THE WITNESS: In addition. 14 The committee's 15 understanding of the way this Plan 16 works, which is what expresses the 17 committee's position, is that it's 18 a legal question which, assuming 19 that a dispute on this subject 20 arises at some point in the 21 future, will be determined by 22 litigation over, A, what exactly 23 is the basis for the claim against 24 Maryland Casualty, legal and

Page 550

1 Linda Casey. I am with Pepper Hamilton.
 2 I represent BNSF Railway Corporation.
 3 Mr. Lockwood, are you aware
 4 that BNSF asserts that Grace purchased
 5 insurance policies that named BNSF as the
 6 at that name insurer upon which Grace was
 7 not also a named insured?

8 MR. FINCH: Object to form,
 9 foundation.

10 THE WITNESS: I believe I
 11 recall seeing Grace make such an
 12 assertion.

13 MS. BAIER: Objection.

14 THE WITNESS: I am not sure,
 15 frankly, however, whether it was
 16 Grace that made the assertion or
 17 BNSF made the assertion. I know
 18 somebody has made the assertion.

19 BY MS. CASEY:

20 Q. Okay. The follow-up
 21 question I have on that is, is it the
 22 ACC's position that as to settled
 23 insurance companies, settled asbestos
 24 insurance companies, to the extent that

1 THE WITNESS: As I hear the
 2 question and as I interpret the
 3 Plan, an insurance policy
 4 purchased by Grace for BNSF, which
 5 did not provide coverage to Grace,
 6 only provided coverage to BNSF
 7 claims by BNSF would not be
 8 enjoined unless Grace had somehow
 9 or another indemnified that
 10 settled insurer against claims by
 11 BNSF.

12 And then in that
 13 hypothetical situation, since I
 14 haven't seen the policies and have
 15 no idea what, if any,
 16 indemnifications they have in
 17 them, there might be a situation
 18 in which if the claim by BNSF
 19 against that policy was an
 20 asbestos personal injury claim and
 21 Grace had indemnified that insurer
 22 against that claim, then under
 23 those circumstances, as I
 24 understand the Plan, that claim

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Page 551

1 they had, in fact, issued policies to be
 2 in BNSF where BNSF is the named insurer,
 3 that the channelling injunction will
 4 enjoin BNSF post-confirmation from
 5 asserting coverage claims against the
 6 settled asbestos insurance company under
 7 those policies?

8 MR. FINCH: Objection -
 9 MS. BAIER: Objection to
 10 form.

11 MR. PERNICONE: Objection
 12 MR. FINCH: -- form,
 13 speculation.

14 To the extent you can
 15 answer the question without
 16 revealing privileged
 17 communications or work product,
 18 you can do so.

19 MR. SCHIAVONI: This is
 20 Schiavoni. I object to form, and
 21 I also object to this being
 22 outside the scope of the
 23 designation, and calling for a
 24 legal conclusion.

1 might well be channelled to the
 2 Trust. But, as I said before, I
 3 have no idea whether any such
 4 indemnification provision exists
 5 or not.

6 BY MS. CASEY:

7 Q. I am not sure if I
 8 understand your answer.
 9 The claim that BNSF would
 10 have against the insurer would be
 11 channelled or the claim the insurer would
 12 have against Grace for indemnification
 13 would be channelled, or both?

14 MS. BAIER: Objection as to
 15 form. It's a hypothetical
 16 speculative question.

17 MR. SCHIAVONI: Also, I
 18 think it calls for speculation
 19 given the nature of the answer
 20 that was given.

21 THE WITNESS: Well, it
 22 clearly calls for speculation.
 23 The answer is, in theory,
 24 both; in reality, only the first.

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Page 552

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Page 554

1 as my colloquy with Mr. Brown on
 2 Friday, I believe, expressed,
 3 which is that if the claim were,
 4 in fact, an asbestos personal
 5 injury claim that was indemnified
 6 by Grace, then the claim by BNSF
 7 against the insurer would be
 8 enjoined.

9 Once the claim is enjoined,
 10 there will be no opportunity for
 11 the insurer to in turn. Have an
 12 indemnity claim against Grace.

13 If the claim is somehow or
 14 another not enjoined, then it
 15 wouldn't be channelled to the
 16 Trust because the only basis on
 17 which it could not be enjoined was
 18 that it was not an asbestos
 19 personal injury claim in the first
 20 place. And the Trust picks up
 21 indemnity liabilities with respect
 22 to Grace for claims that arise out
 23 of asbestos personal injury
 24 claims.

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Page 556

1 scenario, but I cannot flatly say
 2 that there is no conceivable
 3 combination of facts that might
 4 preclude that result from taking
 5 place.

6 BNSF is suing, by
 7 hypothesis, for coverage of a
 8 claim against BNSF. What is that
 9 claim? If somehow or another that
 10 claim fell within the definition
 11 of asbestos personal injury claim,
 12 as defined in the Plan, which I
 13 don't know whether it would or
 14 wouldn't, but theoretically it
 15 might, and if BNSF were held
 16 liable on that asbestos personal
 17 injury claim, brought a suit
 18 against that insurer on the
 19 separate policy, the insurer
 20 somehow or another produces what
 21 seems to me to be highly unlikely,
 22 which is an indemnity from Grace,
 23 saying that not only did we
 24 purchase this insurance policy for

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Page 557

1 But, again, I have no idea
 2 what kind of claims we are talking
 3 about here, so this is purely at a
 4 theoretical level of how the Plan
 5 would work on unspecified facts
 6 and unspecified contractual
 7 undertakings.

8 BY MS. CASEY:

9 Q. Let me ask it a different
 10 way then.

11 Is it the ACC's position
 12 that the Plan under any circumstances can
 13 enjoin BNSF from asserting its contract
 14 rights against the insurers where Grace
 15 purchased the policy but has not been a
 16 beneficiary under the policy?

17 MR. FINCH: Objection, form
 18 MS. DeCRISTOFARO: Objection

19 to form.

20 MR. SCHIAVONI: Objection to
 21 form, calls for a legal
 22 conclusion, calls for speculation.

23 THE WITNESS: It is very
 24 hard for me to imagine that

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1 BNSF's benefit but we gave the
 2 insurer an indemnity that it would
 3 never have to pay any money on the
 4 policy, then it's possible that
 5 that claim could wind up being
 6 enjoined because it gave rise to
 7 an indemnity or would give rise to
 8 an indemnity claim against Grace
 9 for an asbestos personal injury
 10 claim.

11 The problem is it is so
 12 inconceivable to me that Grace
 13 could give an indemnity to an
 14 insurer for a policy that didn't
 15 cover Grace but was purchased for
 16 BNSF and which hypothesis had
 17 never been exhausted. I can't
 18 imagine how that could come about.

19 So you are forcing me, when
 20 you give me these hypotheticals,
 21 to dream up scenarios under which
 22 the hypothetical might possibly
 23 apply, no matter how unrealistic
 24 the scenario appears to me to be.

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1 And that scenario to me appears to
 2 be extraordinarily unrealistic, if
 3 not impossible.

4 BY MS. CASEY:

5 Q. I would like you to turn to
 6 Exhibit ACC Exhibit-11.

7 MR. FINCH: The TDP?

8 MS. CASEY: Yes, the TDP.

9 THE WITNESS: Okay. I have
 10 it.

11 BY MS. CASEY:

12 Q. And specifically 5.12.

13 A. I have it.

14 Q. Okay. 5.12 by its terms
 15 applies to claims that BNSF and others
 16 would have against settled asbestos
 17 insurance companies. Let me ask an
 18 initial question.

19 It is the ACC's position
 20 that the Asbestos Insurance Entity
 21 injunction also enjoins asbestos claims
 22 as defined by the Plan from being
 23 asserted against unsettled asbestos
 24 insurance companies, correct?

Page 558

Page 560

1 regarding cash portion. I am not sure I
 2 understand the basis for saying that the
 3 channelling of the indemnification claims
 4 constitutes a substantial contribution to
 5 the Plan or a benefit to the Plan, to the
 6 asbestos claimants.

7 Can you explain how that
 8 constitutes a benefit?

9 MR. FINCH: Objection,
 10 mischaracterizes prior testimony.

11 THE WITNESS: I don't
 12 believe I testified that that was
 13 a benefit to the Trust.

14 The channelling of the
 15 claims, the indemnity claims,
 16 against Grace, I testified was a
 17 benefit to the Grace Estate.

18 The statute, in general,
 19 says that a protected party has to
 20 have something contributed on its
 21 behalf to the Trust in exchange
 22 for the injunction. That's a very
 23 broad paraphrase to the statute.
 24 So the protection for the

Page 559

Page 561

1 A. In general, that's true.
 2 The language is very specific as to what
 3 kind of claims that it enjoins against
 4 non-settled insurers, but subject to the
 5 caveat that you have to look at the
 6 definition to know exactly which kind of
 7 claims you are talking about, yes.

8 Q. Does the TDP have a
 9 provision by which BNSF Railway can
 10 assert its enjoined claims against the
 11 unsettled asbestos insurance companies?

12 MR. SCHIAVONI: Objection to
 13 form.

14 THE WITNESS: At the moment,
 15 I can't think of anything.

16 BY MS. CASEY:

17 Q. Okay. My final questions
 18 concern the contribution that Grace is
 19 allegedly providing to the Plan on behalf
 20 of the insurance companies for the
 21 benefit of the 524(g) injunction.

22 I understand the cash
 23 portion – at least I understand the
 24 argument that the ACC is present.

1 settled insurance company is the
 2 injunction. The benefit to the
 3 Trust, which if it, in effect,
 4 purchases that protection, is the
 5 Grace contribution, which Grace is
 6 making on behalf of itself and
 7 multiple other entities.

8 BY MS. CASEY:

9 Q. The cash contribution?

10 A. Well, the entirety of the
 11 contribution. There is cash; there is
 12 notes, there is warrant; there is
 13 insurance; and there is the Grace
 14 Estate's claim against Fresenius and
 15 Sealed Air.

16 You will recall that

17 Fresenius and -- the committee -- the two
 18 committees, the PI and the PD committees,
 19 brought claims against Sealed Air and
 20 Fresenius on behalf of the Grace Estate.
 21 So when those claims were settled, they
 22 were not only settled by the entities
 23 against which they were brought, namely
 24 Sealed Air and Fresenius, but, to the

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30 (Pages 562 to 565)

Page 562	Page 564
1 extent that the proceeds of those 2 settlements wind up in the Grace Trust as 3 opposed to the Grace Estate for 4 distribution to other people, they are a 5 settlement part of Grace's contribution 6 to the Trust.	1 MR. FINCH: Objection, 2 foundation. 3 BY MR. SPEIGHTS: 4 Q. Yes, you personally. 5 A. No. 6 Q. Was your law firm? 7 MR. FINCH: Objection, form, 8 foundation, relevance. 9 THE WITNESS: It depends on 10 how you define negotiations when 11 it comes to dealing with a 12 congressional enactment. My 13 partner, Mr. Inselbuch, to my 14 knowledge, had at least one 15 meeting with Senator Heflin on the 16 subject of the statute. 17 What other discussions, 18 either in committee or outside 19 committee or whatever, 20 Mr. Inselbuch might have been 21 involved with, I really don't 22 know. But he's being deposed on 23 June 12th, and I guess you could 24 ask him.
12 Q. Has the ACC attempted to 13 apportion or value those portions of the 14 contributions made by Grace that are upon 15 Grace's behalf versus upon the insurer's 16 behalf?	
17 MR. FINCH: You can answer 18 that yes or no.	
19 THE WITNESS: Well, I will 20 answer it no and add I am not sure 21 how anybody could go about doing 22 that. It's what is known as a 23 lump sum deal.	
24 MS. CASEY: I have no further questions.	
21 MR. SCHIAVONI: Actually, 22 could we let Mr. Speights from 23 South Carolina go first.	
24 MR. FINCH: You are up, Dan.	

Page 563	Page 565
1 - - -	
2 EXAMINATION	
3 - - -	
4 BY MR. SPEIGHTS:	
5 Q. Mr. Lockwood, were you 6 involved in the negotiation of the 524 -- 7 strike that.	
8 Were you involved in the --	
9 MS. BAIER: Dan, can you 10 speak up or come closer to the 11 phone or something?	
12 THE WITNESS: Nobody can 13 hear you.	
14 MR. SPEIGHTS: I picked up 15 the phone. I am not on speaker.	
16 MR. FINCH: Now we can hear 17 you.	
18 THE WITNESS: That's better.	
19 MR. FINCH: That's better.	
20 BY MR. SPEIGHTS:	
21 Q. Let me start over again.	
22 Mr. Lockwood, were you involved in the 23 negotiation of the 524(g) statute?	
24 A. Me personally?	
1 BY MR. SPEIGHTS:	
2 Q. Would you agree with me that 3 the 524(g) statute always refers to the 4 word "Trust" in singular rather than 5 plural?	
6 A. I would have to go back and 7 look at the statute to be sure of that.	
8 If you tell me it does, I am not going to 9 argue with you about it.	
10 Q. Well, I am actually not 11 going to tell you anything. But if you 12 don't recall without looking at the 13 statute, I certainly would accept that 14 answer.	
15 A. I do not specifically recall 16 without looking at the statute.	
17 Q. Do you recall any bankruptcy 18 that was contested and provides for two 19 asbestos trusts, two or more asbestos 20 trusts?	
21 A. Do you mean a bankruptcy 22 where the Plan proposed to create two 23 trusts, and somebody said there could 24 only be one and that was the contest and	

48 (Pages 634 to 637)

Page 634

Page 636

1 the same position and give the
2 same instruction.

3 If you ask about questions
4 that Libby claimants have taken in
5 papers filed in the court, for
6 example, in a Disclosure Statement
7 objections and the bullet point
8 Plan objections and the
9 committee's responses made to that
10 in open court, I will permit
11 Mr. Lockwood certainly to answer
12 those questions.

13 But anything that gets into
14 communications with between the
15 Libby claimants with the rest of
16 the ACC or counsel for the ACC
17 about their respective views of
18 insurance coverage, I am going to
19 take the position as privileged.

20 And so I think you have to
21 do it on a question-by-question
22 basis, but that's my general
23 position.

24 BY MR. SCHIAVONI:

1 Q. Okay. Mr. Lockwood, I just
2 have one other brief topic. And here is
3 the first question on that: Does the
4 Plan purport to release claims that may
5 exist between insurers and Non-Debtors?

6 MR. FINCH: Objection, form,
7 broad, vague.

8 THE WITNESS: Phrased as
9 broadly as you have, I think the
10 answer is yes.

11 MR. SCHIAVONI: Okay. Thank
12 you. I have no further questions.

13 MR. FINCH: Is there anyone
14 else in the room who has
15 questions?

16 MR. BROWN: I have some
17 follow-ups.

18 MR. FINCH: Is there anyone
19 else on the telephone who has not
20 asked questions yet who has
21 questions?

22 (No response.)

23 MR. FINCH: Hearing no
24 affirmative response, I will let

1 you have follow-up until we run
2 out of time.

3 (There was a discussion held
4 off the record at this time.)
5 (There was a break from 3:55
6 p.m. to 4:03 p.m.)

7 - - -
8 EXAMINATION
9 - - -

10 BY MR. BROWN:

11 Q. Mr. Lockwood, just a couple
12 of follow-ups. The court reporter is
13 actually going to read back a question
14 and answer. I think it's probably easier
15 to do that, and then I will ask my
16 follow-up question. It was end of
17 Mr. Wisler's questioning of you.

18 A. Okay.

19 (The reporter read from the
20 record as requested.)

21 BY MR. BROWN:

22 Q. And after that,
23 Mr. Lockwood, Mr. Wisler asked you a
24 follow-up as to what type of claim it

Page 637

1 would be.

2 And is it correct that the
3 ACC does not have a position on what type
4 of claim it would be if it's not a Class
5 6 claim?

6 A. Well, the ACC doesn't, as
7 such, have positions on hypothetical
8 questions. So, yes, the ACC doesn't have
9 a position on that issue. The ACC --
10 well, I will leave it at that.

11 Q. On Friday, Mr. Cohn asked
12 you a question, who drafted the TDP.
13 That was the question, and you gave an
14 answer which I am happy to show you the
15 full answer. But I WANT to repeat a
16 portion of your answer. You said: "The
17 participants that did it were basically
18 counsel for the ACC, counsel for the FCR,
19 and members of the ACC itself in terms of
20 reviewing and commenting on things, and
21 the FCR himself."

22 When you said the ACC
23 itself, what did you mean?

24 A. I meant --